

EXHIBIT A

NB6RSECh

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 SECTOR RESOURCES LTD,

4 Petitioner,

5 v.

23 Civ. 9728 (ER)

6 ETHOS ASSET MANAGEMENT, INC.
7 AND EAST WEST BANCORP INC.
8 A/K/A EAST WEST BANK,,

TRO Hearing

9 Respondent.

-----x

10 New York, N.Y.
11 November 13, 2023
12 2:00 p.m.

12 Before:

13 HON. EDGARDO RAMOS,

14 District Judge

15 APPEARANCES

16 SKARZYNSKI MARICK & BLACK LLP
Attorneys for Petitioner
17 BY: JANENE MARIE MARASCIULLO
DOUGLAS GIOMBARRESE

18 LINKLATERS LLP
19 Attorneys for Respondent Ethos Asset Managment, Inc.
20 BY: ROBIN NUNN (By Telephone)

21 PRYOR CASHMAN LLP
Attorneys for Respondent East West Bancorp Inc a/k/a East
22 West Bank
BY: JEFFREY ALBERTS
23 MICHAEL LEVISON
STEPHANIE PAOLA CHERY

NB6RSECh

(Case called)

MS. MARASCIULLO: Your Honor, may it please the Court, my name is Janene Marasciullo. I represent Sector. Here with me is Douglas Giombarrese.

MR. GIOMBARRESE: Good afternoon, your Honor.

THE COURT: I'm sorry who?

MR. GIOMBARRESE: Douglas Giombarrese.

MR. ALBERTS: Good afternoon, your Honor. Jeffrey Alberts from Pryor Cashman, and appearing at the counsel table from my firm are Michael Levison and Stephanie Chery on behalf of East West Bank.

THE DEPUTY CLERK: And counsel for Ethos, please state your name for the record.

MS. NUNN: (Unintelligible)

THE COURT: Ms. Nunn, you are breaking up quite a bit, and we're unable to understand what you are saying.

MS. NUNN: Robin Nunn counsel for Ethos Asset Management.

THE COURT: Are you on a speaker phone, Ms. Nunn? Because I can barely understand what you are saying. It's not a volume thing. It's a -- I can't understand what you are saying because of the connection.

MS. NUNN: (Unintelligible)

THE COURT: I have no idea what you just said.

MS. NUNN: (Unintelligible)

NB6RSECh

1 THE COURT: I say again, I have no idea what you just
2 said.

3 THE DEPUTY CLERK: She's going to pick up the phone
4 and dial in.

5 THE COURT: Okay.

6 MS. NUNN: Hi, this is Robin, counsel for Ethos Asset
7 Management. Can you hear me?

8 THE COURT: That's a little bit better. Why don't we
9 see if we can proceed. This matter is on for a hearing on
10 plaintiff's motion for preliminary injunction. Ms. Nunn is
11 joining us by telephone, and Ms. Nunn, I'm going to ask in
12 advance that when you speak, given the difficulties that we
13 sometimes have with telephone conferences, I will endeavor to
14 ask you fairly precise questions. I will ask that you be as
15 concise as you possibly can, and if you find yourself speaking
16 for more than a minute or so, you should stop and make sure
17 that I'm not trying to interject a question. Because
18 otherwise, it could be a long and very unpleasant hearing for
19 me and, therefore, for all of you. So, with that, let me begin
20 by noting that I have received the parties' papers, including
21 declarations, and I note for the record that based on Sector's
22 response to EWB's papers that there is at least a change in the
23 ask for the preliminary injunction.

24 Ms. Marasciullo, why don't you tell me how it is that
25 your request for preliminary injunction has changed?

NB6RSECh

1 MS. MARASCIULLO: Your Honor, after reviewing the
2 papers from East West Bank, we understand that the
3 representations that Ethos made that it could cancel that
4 letter of credit and had the power to do so, those
5 representations are not accurate. So having reviewed East West
6 Bank's opposition, what we're asking the Court to do is two
7 things. We're asking the Court to restrain both East West Bank
8 and Ethos Asset Management from removing any of the \$812,000
9 that is in the East West Bank account.

10 THE COURT: How much?

11 MS. MARASCIULLO: \$812,000 of our \$3.25 million.
12 That's what is left.

13 THE COURT: And you said there were two things.

14 MS. MARASCIULLO: Correct. The other thing we would
15 ask, your Honor, is restrain Ethos from making any more
16 withdrawals on the line of credit that they have from East West
17 Bank. It's my understanding that if Ethos does not make any
18 more withdrawals on that line of credit, that there should not
19 be any -- I will let counsel from East West Bank correct me if
20 I'm wrong, but my understanding is if there are no more draws
21 by Ethos on the letter of credit, there shouldn't be any draws
22 on the standby letter of credit that --

23 THE COURT: I'm going to ask you, Ms. Marasciullo, to
24 move the microphone close to you.

25 MS. MARASCIULLO: To let me rephrase.

NB6RSECh

1 It is my understanding that if Ethos does not drawdown
2 on the line of credit that it has from East West Bank, that
3 East West Bank will not drawdown on the standby letter of
4 credit that my client has provided. So, since I can't under
5 the law ask you right now to enjoin East West Bank from drawing
6 on the standby letter of credit, I'm asking you to enjoin Ethos
7 from drawing down on the line of credit that they have with
8 East West Bank and that should protect our standby letter of
9 credit.

10 THE COURT: Okay. Let me turn to Mr. Alberts.
11 Because as I understand East West Bank's position on the
12 standby letter of credit, the bank is the only beneficiary to
13 that standby letter of credit?

14 MS. MARASCIULLO: That is correct.

15 THE COURT: And as I understand the position with
16 respect to the account which holds the monies that Sector
17 deposited, East West Bank has the right to offset amounts in
18 that account? Am I correct, Mr. Alberts?

19 MR. ALBERTS: With two qualifications, your Honor.

20 THE COURT: You can be seated.

21 MR. ALBERTS: With two qualifications, your Honor.
22 The first being, I just want to clarify that Sector has several
23 times suggested that the funds that are currently in the DDA,
24 the direct deposit account, aren't the funds that Sector
25 deposited. They've never introduced any evidence of that, and

NB6RSECh

1 we don't understand that to be the case.

2 THE COURT: I'm sorry. So are you saying that Sector
3 never deposited any monies into that account, or are you saying
4 that any monies that were deposited into that account are
5 fundable and mixed with the other funds in that account, and
6 therefore, you are not able to segregate?

7 MR. ALBERTS: Closer to the latter. Specifically, our
8 understanding is that Sector transferred the \$3.25 million into
9 the account on June 6 this year.

10 THE COURT: Okay.

11 MR. ALBERTS: But at the end of that month,
12 \$3.25 million had been transferred out of the account. There
13 are funds currently in the account but they appear to be the
14 remainder of money that was deposited in the second half of
15 October, and we have no way of knowing that they are somehow
16 connected to Sector. But based on Sector's description of the
17 transaction, our understanding is that they are not. So for
18 purposes of understanding potential implications of taking
19 funds out of the account with respect to Sector, I think it's
20 important to keep in mind, Sector has no special relationship
21 to those funds. The funds don't belong to Sector. They don't
22 appear to be traceable to the deposited made by Sector. Sector
23 has no security on those funds, and although Sector keeps
24 referring to them as "our funds" or "our collateral," Sector is
25 just one of many creditors of Ethos that may seek to get some

NB6RSECh

1 of the money that are in that account.

2 THE COURT: Two questions. First of all, if I
3 understand what you said, Sector deposited \$3.25 million in
4 June of this year. And by October of this year, 3.25 had been
5 transferred out of the account.

6 MR. ALBERTS: By the end of June.

7 THE COURT: By the end of June.

8 MR. ALBERTS: And by the end of that month, over
9 \$3.25 million had been transferred out.

10 THE COURT: Let me ask you this: Were these the only
11 funds in the account, or were there other depositors other than
12 Sector?

13 MR. ALBERTS: I believe there are other depositors and
14 other withdrawals?

15 THE COURT: And who withdrew the amounts? Is that
16 Ethos, if you know?

17 MR. ALBERTS: You mean, who initiated the transfer?

18 THE COURT: You said 3.25 went into the account in
19 June. By the end of June, 3.25 had been withdrawn. Who made
20 the withdrawals?

21 MR. ALBERTS: I don't recall. I need to check. I
22 think it was more than \$3.25 million. Just to be clear, there
23 have been a significant amount of transfers in and out just in
24 that month and subsequent months. There's no reason to treat
25 the funds currently in the account as being somehow traceable

NB6RSECh

1 to the deposited funds that were made by Sector. There have
2 been many other depositors in a fairly significant amount of
3 time.

4 THE COURT: I'm trying to ask very basic questions.
5 That account was a direct deposit account; is what you called
6 it?

7 MR. ALBERTS: Yes.

8 THE COURT: Were the only monies put into that
9 account, was it created to receive the deposit that Sector
10 made?

11 MR. LEVISON: Your Honor, if I may, I can answer that
12 question.

13 THE COURT: Okay.

14 MR. LEVISON: The answer is no. This is Ethos'
15 checking account at the bank. There's numerous depositors and
16 there's numerous withdrawal entities including Ethos itself. I
17 can just say after June, between June and now, there's been
18 over \$19 million of deposits into that account.

19 THE COURT: Okay.

20 MR. LEVISON: As Mr. Alberts indicated, money has been
21 transferred in significant amounts, and what is left is
22 \$812,000 as of today. And that's because the bank put a freeze
23 on it after the last hearing.

24 THE COURT: Why did the bank put a freeze on those
25 funds?

NB6RSECh

1 MR. LEVISON: After learning about what had happened
2 at the TRO hearing, they were -- when I reported what happened,
3 the bank determined that over \$500,000 was scheduled to be
4 wired out after the hearing. In other words, wire transfers
5 were initiated by Ethos after your Honor's hearing, so the bank
6 tried to stop it. The wires actually went out, and then the
7 bank was able to recall it. So there was only going to be
8 about \$300,000 in the account if the bank had not clawed back
9 those transfers.

10 THE COURT: That was a determination that was made by
11 the bank itself, correct?

12 MR. LEVISON: Correct.

13 THE COURT: It was not done at the request of Ethos?

14 MR. LEVISON: No, your Honor.

15 THE COURT: And as you sit here today, you are not
16 able to say whether any part of that \$800,000 were monies that
17 were deposited by Sector in June of this year?

18 MR. ALBERTS: Correct, your Honor.

19 MS. NUNN: Your Honor, can I --

20 THE COURT: No, not yet. Explain to me what rights
21 the bank has over the monies in that account. So I understand
22 there's a set-off. What does that mean?

23 MR. ALBERTS: Well, when the bank made the loan -- or
24 line of credit loan to Ethos, and with business loans, the
25 parties agreed that the bank has a right of set-off as against

NB6RSECh

1 monies in that account. Meaning, if Ethos owed money to the
2 bank for whatever reason, the bank has the right under the
3 contract to set-off and to take those monies and apply it to
4 the debt. In addition, on a monthly basis, Ethos has granted
5 the bank the right to debit the account via ACH, automatic
6 check payment, to pay the monthly loan credit that is due on
7 the line of credit.

8 THE COURT: I take it at this point, Ethos'
9 obligations to the bank are more than \$800,000?

10 MR. LEVISON: That's correct, your Honor, as set forth
11 in the declaration, it's 6.8 million, principal.

12 THE COURT: As I understand from your submission,
13 Sector has no right, contractual or otherwise to the funds in
14 the account?

15 MR. LEVISON: Sector has no right. That's correct,
16 your Honor.

17 THE COURT: Okay. Let me come back to you,
18 Ms. Marasciullo. Now that this case from your perspective is
19 only about \$830,000, why are we still here? Why hasn't this
20 settled?

21 MS. MARASCIULLO: Because I think you need to direct
22 that question to Ms. Nunn. In terms of settled, I contacted
23 East West Bank when I got their papers. I said to them if
24 you've administratively frozen the account, will you agree to
25 administratively keep it frozen, not taking anything out of it,

NB6RSECh

1 with respect to me. I'm not asking for an order saying East
2 West Bank write a check to Sector for \$812,000. I'm asking for
3 the Court to restrain, and apparently we need an order to
4 restrain Ethos from taking that money.

5 THE COURT: Do you? Because I'll go back to the bank.
6 The bank has indicated that it has frozen that account.

7 MS. NUNN: I --

8 THE COURT: Not yet, Ms. Nunn. What does that mean?

9 MR. LEVISON: It means it's frozen so that we could
10 keep the status quo while determining what was going on. I can
11 tell you this, the bank does not have an objection from
12 restraining Ethos from withdrawing monies from the account.
13 But the bank does object to any order that requires or
14 restrains the bank in any way, including by giving notice to
15 Sector, for the bank to set-off as against the account, should
16 it choose to do so or be forced to do so or, from debiting the
17 account from the next payment that is due.

18 THE COURT: It's frozen now. Does that mean if Ethos
19 were to say request a withdrawal for \$100,000 or the full
20 amount, it would not be able to do so?

21 MR. LEVISON: Not without the bank's consent. That is
22 correct, your Honor.

23 THE COURT: So the account is frozen at the discretion
24 of the bank, of East West Bank?

25 MR. LEVISON: That's correct.

NB6RSECh

1 THE COURT: And it can be unfrozen at any time at the
2 request of the bank?

3 MR. LEVISON: That is also, correct, your Honor.

4 THE COURT: And is Ms. Marasciullo accurate in her
5 representation that she asked you to give her, to the extent
6 that there was going to be unfrozen or any debit to the
7 account, that you give her 72-hours notice and you refused to
8 do so?

9 MR. LEVISON: Yes. The request was made with respect
10 to other requests, but, again, there was no resolution reached
11 with respect to the motion.

12 THE COURT: Okay. Ms. Nunn is there something that
13 you were trying to say?

14 MS. NUNN: Yes, and I wasn't trying to interrupt
15 earlier. My phone was on mute. I would love to add a couple
16 of small points that I think are important for this
17 conversation. One it's our position that the argument cannot
18 be made and --

19 THE COURT: Ms. Nunn, I don't understand what you are
20 saying. Could you slow down?

21 MS. NUNN: So my understanding is that we are now
22 seeking a different preliminary injunction that what was
23 initially sought in the petition?

24 THE COURT: Yes.

25 MS. NUNN: And I am arguing that this is the first

NB6RSECh

1 time that we are hearing this new request, and that there is a,
2 basically, an unfairness factor to that. I would also argue
3 that no transactions were initiated after the hearing last week
4 on I believe it was November 6. Any transactions were
5 initiated prior to that, and, as in any bank account, took time
6 to come out. So nothing was, again, done after the hearing
7 where representations were made that we would not be making any
8 withdrawals. The account was already frozen, was my
9 understanding when I came to the hearing, my client said. When
10 I was going in on the 6th, the account had been frozen by the
11 bank.

12 THE COURT: I'm sorry. Ms. Nunn, you are saying that
13 the account was frozen when you were last here?

14 MS. NUNN: Yes, on the 6th.

15 THE COURT: Mr. Levison, is that accurate?

16 MR. LEVISON: I don't know the timing, if that is
17 accurate. I know that the wires had left the bank, and the
18 bank had to recall them.

19 THE COURT: The wires left what day?

20 MR. LEVISON: The 6th.

21 THE COURT: The day of the hearing?

22 MR. LEVISON: I don't know the time but Mr. Alberts
23 told me about the hearing, and I called and found out that they
24 were trying to get wires back.

25 THE COURT: It sounds like after.

NB6RSECh

1 MR. LEVISON: I don't know what time of the day. I
2 can't tell you for sure.

3 THE COURT: Understood. Ms. Nunn, to the extent that
4 you are saying that the request made by Sector, its amendment
5 to its preliminary injunction request, is different, and you
6 are hearing it for the first time now, I can tell you that I
7 read their papers, and in their papers, at least in response to
8 East West Bank's response, they indicated that they were no
9 longer seeking to enjoin as to the standby letter of credit.
10 Is there anything else that you wanted to say Ms. Nunn?

11 MS. NUNN: I would, you know, also just add, since you
12 raised the point, as to why has this not settled. The last
13 communication between the parties was a drafted settlement
14 agreement, and Ethos never made any response to that.

15 MS. MARASCIULLO: May I address that?

16 THE COURT: Yes, Ms. Marasciullo.

17 MS. MARASCIULLO: Ms. Nunn did send us a settlement
18 agreement.

19 THE COURT: When?

20 MS. MARASCIULLO: Well, she sent us several, but the
21 terms kept changing, and the primary concern, or the primary
22 impediment to a resolution, was that we kept getting different
23 representations about what relief we could get with respect to
24 the standby letter of credit. And, you known, it's over
25 \$5 million. It's \$5,0050,000 and change. It's more than the

NB6RSECh

1 cash. And what Ms. Nunn offered to do was to send an email to
2 East West Bank directing them to cancel the standby letter of
3 credit, which her client doesn't have authority to do. And we
4 had several discussions about that. It wasn't until I had a
5 phone call with Mr. Alberts and Mr. Levison I want to say on
6 Thursday. I don't know if it was Thursday or Wednesday.
7 Things happened very quickly last week. But they said to me,
8 you know, Ethos doesn't have any authority on the standby
9 letter of credit. With respect to the cash, the answer was,
10 you know, we'll pay you \$250,000 immediately. We'll pay you --
11 first, it was \$1 million in 15 days, and then it was the
12 remainder in 30 days. But we won't sign a confession of
13 judgment, and by the way, you have to give up all your claims.

14 And, your Honor, it's a significant amount of money
15 that they are asking us to give up. Because on the
16 \$10 million, there's 9 percent statutory interest plus 2
17 percent under the law. And actually, they want our actual
18 damages, and they wanted us to give all of that up in response
19 for a promise to pay. And then the real impediment to
20 settlement was Ms. Nunn represented to us repeatedly that Ethos
21 could cancel that letter of credit. And when we got an email
22 from counsel for East West Bank saying Ethos can't do that.
23 Because remember, I had no idea that the debt was -- I had no
24 idea, and my client had no idea, that that standby letter of
25 credit was securing an Ethos debt. That was never disclosed to

NB6RSECh

1 my client. That was news to us when we got East West Bank's
2 opposition.

3 But at that point, you know, that's why settlement
4 discussions breakdown. We would be happy to resolve this case
5 if we had any ability to negotiate and think that something was
6 going to happen. But sitting here in court today and listening
7 that wire transfers in the amount of \$500,000 were initiated on
8 November 6, I'm deeply disturbed because Ms. Nunn knew about
9 this case. She definitely knew about it on November 5 because
10 she emailed me, but she claims that she knew about it before.
11 I don't know when she found about it. I had no idea of
12 Ms. Nunn's existence or Linklaters involvement Sunday evening.
13 What I'm hearing right now, they get notice that we're going to
14 try to do something, and they go and try to take the money.

15 Your Honor, right there, we're entitled to an
16 injunction on the A12. And, again, I don't want to be here
17 having a fight right now as between East West Bank and Sector.
18 I think our rights to that money are greater. One of the
19 things I'll tell you is in the record. I know that is strange.
20 First of all, we deposited the money. There's no dispute about
21 that. Mr. Yu's affidavit said that Sector deposited the money
22 into Ethos' East West Bank's account on June 6. That's not in
23 dispute. What is also not in dispute is my client Jeffrey
24 Dell'Orfano called Jeffrey Yu on two occasions in October --

25 THE COURT: He called who?

NB6RSECh

1 MS. MARASCIULLO: He called Jeffrey Yu, who is the
2 vice president responsible support Ethos' account. And he
3 called Mr. Yu and said, Ethos is telling me that you are going
4 to release that standby letter of credit. What has been done?
5 The first time Mr. Yu told Mr. Dell'Orfano, We're discussing
6 it. That was on -- it was either October 4 or October 6. I
7 need to look at the declaration, but it's in paragraph 47 of
8 Mr. Dell'Orfano's declaration. Mr. Dell'Orfano called back on
9 October 13 and asked again, When are you going to release that
10 standby letter of credit? He said, Go talk to Ethos, which is,
11 again, why we thought Ethos had control over that standby
12 letter of court.

13 Now that we're in court, we're finding out things are
14 a little bit different. I'm not casting aspersions on East
15 West Bank. I don't know if Mr. Yu understood by telling my
16 client to go talk to Ethos, he was signaling that Ethos
17 controlled that standby letter of credit, but we had no idea
18 that it was incumbered or to the extent to which it was
19 incumbered until East West Bank --

20 THE COURT: I guess I'm not understanding how that is
21 possible because the standby letter of credit was issued by
22 your bank.

23 MS. MARASCIULLO: Right.

24 THE COURT: And as I understand it, it was issued in
25 the benefit of East West Bank.

NB6RSECh

1 MS. MARASCIULLO: Right.

2 THE COURT: And so what it is that you are not
3 understanding about the fact that if it's East West Bank's
4 authority to release it or not?

5 MS. MARASCIULLO: Well, your Honor, Mr. Yu, who signed
6 the declaration filed by East West Bank, told my client to go
7 talk to Ethos.

8 THE COURT: Right and?

9 MS. MARASCIULLO: That -- your Honor, let me do this
10 by analogy. You have to understand, my client did not
11 understand what Ethos had done.

12 THE COURT: Putting that aside, did your client
13 understand what your client had done?

14 MS. MARASCIULLO: No, I don't think my client did
15 understand what they had done, your Honor, candidly, you know.
16 But the issue here is: Imagine that I have a home equity line
17 of credit on my home. I might have one. I have a home equity
18 line of credit. If I don't draw down on it, if I don't
19 actually borrow money, I can go into my bank and terminate it
20 at any time. That's the representation that we were getting.
21 Ethos was telling us, we can terminate this. We can terminate
22 the standby letter of credit at any time. There are emails to
23 that effect where Mr. Santos emailed my client and said, I
24 directed East West Bank to terminate the standby letter of
25 credit.

NB6RSECh

1 This is a little bit of sideshow because I'm not
2 asking you anymore to prohibit East West Bank from drawing on
3 that standby letter of credit because I recognize that the law
4 doesn't allow me to make that request. What I'm asking you to
5 do is to restrain Ethos from drawing down on the \$14 million
6 line of credit that that standby letter of credit secures.
7 Because if they don't draw on the \$14 million letter of credit,
8 East West Bank shouldn't need to make draws on my client's
9 standby letter of credit. This is not a perfect situation,
10 but, your Honor, Ethos took our collateral and it's gone except
11 for \$812,000.

12 THE COURT: Well, maybe. Mr. Levison?

13 MR. LEVISON: A couple things, your Honor. With
14 respect to the new request to restrain Ethos from drawing down
15 on its line of credit with East West Bank, that's not in any
16 papers as far as I recall. I don't know that the bank has an
17 objection to that, but I just want to make clear that even if
18 Ethos is restrained from making additional borrowings from the
19 bank, that has nothing to do with whether or not the bank is
20 going to drawdown on the standby letter of credit from J.P.
21 Morgan. The standby letter of credit, which was granted to the
22 bank in favor to the bank at the behest of Sector, secures the
23 line of credit. And if that line of credit goes into default,
24 or when it matures at the end of December, the bank is, of
25 course, within its rights to drawdown on the standby letter of

NB6RSECh

1 credit, notwithstanding the fact that there are no additional
2 borrowings under the line of credit. I also want to add that
3 it doesn't make sense to me that Sector says they don't
4 understand that this standby letter of credit was to secure a
5 loan from East West Bank to Ethos. It says it on the face of
6 the standby letter of credit. It says, specifically, "This
7 letter of credit is issued to support the credit banking
8 facility granted to Ethos Asset Management, Inc., by East West
9 Bank." That's on the first of the letter of credit.

10 Second, with respect to the demand deposit account,
11 there's simply no evidence to suggest that the \$812,000 that
12 remains in the demand deposit account has any relationship to
13 Sector. The \$3.25 million that was deposited five months ago
14 is very likely gone. Millions of dollars have gone in and out
15 of that account since the initial deposit in June, millions,
16 \$19 million. If there's been \$19 million in deposits, and you
17 are down to \$800,000, it's very clear that millions have gone
18 out. To say it's very clear that it's Sector's money, there's
19 no facts to support that. Again, the bank does not object to
20 an order restraining Ethos from withdrawing that money however,
21 the bank must be allowed to withdraw those funds to the extent
22 necessary to make a monthly payment and/or to reduce the debt
23 upon maturity.

24 THE COURT: And that's consistent with the documents
25 that created that account, correct?

NB6RSECh

1 MR. LEVISON: Correct, your Honor. Consistently,
2 certainly.

3 THE COURT: I'm sorry?

4 MR. LEVISON: Yes, consistent.

5 THE COURT: Yes.

6 MR. LEVISON: I just want to also clarify for the
7 record, I do not know when the request for the transfers that
8 were clawed back was actually made. I don't know when the
9 initial request was. I meant to say and I want to clarify for
10 the record, that I only found out about it after the hearing,
11 and I know that the transfers were clawed back after the
12 hearing.

13 THE COURT: Okay. Ms. Marasciullo, there's also some
14 additional facts that I suspect you take issue with that were
15 put before me in Ethos' papers. One, apparently, they are
16 flush with cash; I think I'm remembering a number like
17 \$600 million quoted in the papers. And two, there's a growing
18 concern that they are very active, and therefore, it seems the
19 premise of the application, which is that Ethos – and I'll put
20 it as neutrally as I can – Ethos went into this knowing that it
21 could not provide the financing, took the collateral and is
22 using it for its own ends and has no intention or ability to
23 pay back that collateral.

24 MS. MARASCIULLO: Your Honor, I can't speak to Ethos'
25 ability to pay, but if they have \$699,000, I don't

NB6RSECh

1 understand --

2 THE COURT: Million.

3 MS. MARASCIULLO: You're right. \$699 million in cash
4 and securities -- that's the representation -- I don't understand
5 why they are asking me -- why they don't repay the loan and get
6 our standby letter of credit canceled and give us our
7 \$3.25 million back. But my concern, your Honor, isn't that
8 they don't have money, my concern is they'll move it, and
9 they'll move it away from our ability to execute on a judgment.
10 I'll respectfully submit that everything we've heard today,
11 including their effort to transfer \$500,000 out, is consistent
12 with that.

13 THE COURT: Let me ask Mr. Levison one other question.
14 Is Ethos in default with respect to any payments that it owes
15 to the banks, or is it in arrears with respect to anything it
16 owes to the banks?

17 MR. LEVISON: There's no payment default.

18 THE COURT: So there's no need for you to drawdown on
19 the letter of credit or offset the account as we sit here?

20 MR. LEVISON: As we sit here today, your Honor, no.

21 THE COURT: So Ms. Marasciullo, let me ask a different
22 question. Part of why I think -- and we'll hear from Ms. Nunn,
23 hopefully clearly -- part of why you're saying they are telling
24 me that they didn't pay the tranches as they were scheduled or
25 why they say they don't owe you any money is because it was a

NB6RSECh

1 significant part of the agreement that was not met by you.
2 This positive verification provision, whatever that may be. Is
3 any of that accurate?

4 MS. MARASCIULLO: No, it's not, your Honor. First of
5 all, they know that we deposited \$3.25 million, and that's not
6 in dispute, because I've given you the direction and Mr. Yu
7 from East West Bank has confirmed that the money was deposited.

8 THE COURT: I understand that.

9 MS. MARASCIULLO: And with respect to the standby
10 letter of credit, the party that was supposed to verify the
11 standby letter of credit pursuant to the agreement was East
12 West Bank, and East West Bank has done so. And, in fact,
13 Mr. Yu's declaration tells you that East West Bank has verified
14 the standby letter of credit. But, your Honor, more damning
15 than all of that is the fact that for three months, when my
16 client wrote to Ethos and said, When are you going to make the
17 first delivery of the first \$10 million, they never said to us,
18 We were not able to verify your collateral. They said to us,
19 The money is on the way, repeatedly in writing. So the idea
20 that some verification didn't happen, I think, is nonsensical.

21 THE COURT: Let me ask you this --

22 MS. MARASCIULLO: Can I add one more thing? It's a
23 little bit off topic, but it relates back to your last
24 question.

25 THE COURT: Very well.

NB6RSECh

1 MS. MARASCIULLO: In Mr. Santos' declarations, again,
2 my concern, and the reason we filed the request for injunctive
3 relief, is because we think the assets are going to get
4 dissipated. And by the way, we have filed for arbitration now.
5 We think any arbitration order will be rendered ineffectual if
6 the assets are gone, and that is a legitimate concern.
7 Mr. Santos, in paragraph -- in the latter half of his
8 declaration says that he's going to sue Sector for enforcing
9 its contractual rights and that he does not accept that
10 Sector -- that we should pay Sector \$3.25 million and cancel
11 the standby letter of credit. That's in the last paragraph of
12 his declaration, which is docket number 30. Your Honor, he's
13 telling all of us that even if we go get an award, not only are
14 we not getting damages, we're not getting our collateral back.

15 THE COURT: But he posits that in a litigation, sort
16 of, posture. He's saying, Look, we're not going to reward
17 Sector by giving it exactly what it wants when it absolutely
18 failed to comply with our agreed dispute provisions in the
19 agreement.

20 MS. MARASCIULLO: Well, respectfully, at this point,
21 we have. We always intended to. Our concern was, on
22 October 30, Mr. Santos sent my client an email, and it's in the
23 record. He sent an email on October 30 saying, We've directed
24 East West Bank to cancel the standby letter of credit, and we
25 have initiated a wire transfer for the first \$10 million. And

NB6RSECh

1 that money never showed up, and that's also in the record.

2 THE COURT: Okay. So --

3 MS. MARASCIULLO: You know, when you look at the
4 panoply of facts, when you look at, you know, all of the
5 circumstances, your Honor, I don't think any rational person
6 could sit here and say, you know the idea that the money is
7 going to be dissipated is not credible. The money has been
8 dissipated and it's going continue to get dissipated.

9 And we have somebody who is, you know -- he's not even
10 a permanent resident of the United States. I don't know how
11 we're going to execute on a judgment when we get it, and I have
12 no doubt -- no doubt -- that we're going to get an arbitration
13 award in our favor. The only question is whether or not my
14 client will be around to enforce it or whether Ethos will be
15 around to pay. Because Mr. Levison just told you that they've
16 transferred \$19 million in and out of that account.

17 THE COURT: And Mr. Levison also told me that as far
18 as he is aware, Ethos is not under any payment default.

19 MS. MARASCIULLO: They are certainly on a payment
20 default to us of \$3.25 million.

21 THE COURT: Let me ask you this, Ms. Marasciullo:
22 Again, the papers before me have some financial statement that
23 indicate that Ethos has north of \$600 million. Do you have any
24 reason to believe that those documents are --

25 MS. MARASCIULLO: Untruthful? Yes, I do. One, when I

NB6RSECh

1 look at that financial statement, and I've looked at lots of
2 them, I've never seen a bank account where the last four digits
3 are sequential. That was the first thing that jumped out at
4 me. I don't believe the Ethos East West Bank account is on
5 there. The last four digits, when you see the last four
6 digits, I know what the Ethos West Bank account number is.
7 That number is not on there.

8 THE COURT: I'm sorry. I don't know what precisely it
9 is you are talking about. What are you talking about?

10 MS. MARASCIULLO: When you look at exhibit M --

11 THE COURT: I don't have exhibit M.

12 MS. MARASCIULLO: Do you want me to hand it up?

13 THE COURT: Sure.

14 MS. MARASCIULLO: My notes are in there. Can I open
15 that?

16 THE COURT: If you can take out just exhibit M, I'm
17 happy to take just exhibit m.

18 MS. MARASCIULLO: That is exhibit k. I have a couple
19 questions about exhibit k. Preliminarily, Mr. Santos did not
20 authenticate exhibit K; Ms. Nunn did. I know New York lawyers
21 tend to authenticate things, unless they works for Ethos,
22 unless she has really intimate knowledge, I wouldn't
23 authenticate a client's financial statement. But when I look
24 at those accounts, those don't look like normal bank accounts
25 in the sense that they are very sequential when you look at the

NB6RSECh

1 last four digits of those accounts. That's the first thing.

2 THE COURT: So the bank account numbers?

3 MS. MARASCIULLO: Yes, the account numbers do not
4 appear to be --

5 THE COURT: What if they were opened on the same day?

6 MS. MARASCIULLO: I don't think they would be like
7 that, your Honor. But be that as it may, I received an email,
8 your Honor. I'm still authenticating it, but I received an
9 email and it's from someone who used to work for Ethos, who
10 knows about this and is embarrassed by it, giving me a bunch of
11 account numbers, very detailed information, none of those
12 account numbers are on that. And I've got those here, too.
13 I'm not going to file those in the record.

14 THE COURT: So this is -- so the record is clear, I'm
15 looking at exhibit k, document 30-11 on the docket. And
16 exhibit k purports to be Ethos Asset Management, Inc. balance
17 sheet as of September 30, 2023. On page 1, it lists assets,
18 and beneath that it lists bank accounts. And it sets forth the
19 following bank account numbers, I guess ending, maybe or maybe
20 the entire number 1005, 1006, 1007, 1008, and then it continues
21 with 1010, 1011, 1012, and similarly. Those various accounts
22 total up to \$699,374,331.95. And Ms. Marasciullo is expressing
23 her lack of satisfaction in these numbers, one, because the
24 fact that they appear to be consecutive, many of them, and two,
25 because they were -- what was the word that you used by

NB6RSECh

1 Ms. Nunn, that these documents were --

2 MS. MARASCIULLO: They were authenticated by Ms. Nunn,
3 not Mr. Santos or anybody employed by Ethos.

4 THE COURT: Authenticated by Ms. Nunn. Okay. And
5 then you said there was a third thing, that you are in contact
6 with a former Ethos employee, who is familiar with Ethos' bank
7 accounts and was embarrassed that these types of documents were
8 presented to you in this litigation.

9 MS. MARASCIULLO: That's not what I meant to convey.

10 THE COURT: Okay.

11 MS. MARASCIULLO: I have an email. I'm happy to bring
12 it up there. I have not filed it on the docket, but I have an
13 email with what purports to be a list of Ethos' bank accounts
14 and none of the account numbers on this email match what is on
15 that document. There's one other thing which is, you know,
16 last week when we were in, your Honor. You said to me Ms. Nunn
17 filed a letter saying she would grant Sector the relief it was
18 seeking. I was thrilled. I would have much -- as much as I
19 enjoy appearing in court, I would have much rathered have
20 worked this out. The emails I got were, we can't perform right
21 away. We'll give you \$250,000 today. We'll give you a million
22 in 15 days, and then we'll give you the last 225 in 30 days,
23 and then it became 40 days and then it was 60 days. None of
24 this adds up. I'd be happy to show you this with the proviso I
25 haven't had a chance to authenticate this.

NB6RSECh

1 THE COURT: I'll look in a second. Do you have
2 copies, and have they been provided to the parties?

3 MS. MARASCIULLO: No, your Honor because, number one,
4 I haven't authenticated. And, number two, I was concerned that
5 the money would be transferred if I disclosed them.

6 THE COURT: Let me get back to this other question.
7 Because I don't know there's this positive verification that
8 Ms. Nunn keeps emphasizing in her papers. Is that a term of
9 art is that a situation where EW Bank had to verify that it
10 received the standby letter of credit or what so far as you
11 know?

12 MS. MARASCIULLO: What the agreement says is that
13 party A, which is Ethos, party A's bank will verify the standby
14 letter of credit. I believe East West's affidavit said that
15 they did that. But the standby letter of credit was issued by
16 J.P. Morgan, which is a large financial institution. I don't
17 think there's any worry that they aren't going to back it up.

18 THE COURT: One of the reasons I tell lawyers to sit
19 down is so that I see the reaction of the other side. And the
20 other side reacted when you said that they verified. So,
21 Mr. Levison, what is your perspective?

22 MR. LEVISON: Two things, your Honor. One is this
23 concept of verification is foreign to me. I did read in the
24 agreement between Ethos and Sector. Again, east West Bank is
25 not a party to this and is a stranger to this agreement. It

NB6RSECh

1 says that after party A's receiving bank receives the Swift
2 MT760 from the party B's issuing bank and will carry out a
3 verification procedure. There's no mention of East West Bank
4 at all. So to suggest that East West Bank has to verify this
5 is, it's just not in the agreement. And in the declaration,
6 there's nothing about Jeffrey Yu stating that the bank verified
7 it. It talks about the bank received a standby letter of
8 credit. Again, the bank made a loan to Ethos. In a condition
9 to making that loan, it was required that a standby letter of
10 credit be granted in its favor.

11 THE COURT: Were you indifferent as to who issued that
12 standby letter of credit?

13 MR. LEVISON: Correct, your Honor.

14 THE COURT: So it could have been Ethos as well?

15 MR. LEVISON: It could have been Ethos. It could have
16 been some other partner.

17 MS. MARASCIULLO: That's not what the loan agreement
18 says. The loan agreement between East West Bank and Ethos says
19 it has to be from a bank acceptable to East West Bank.

20 MR. LEVISON: That's correct.

21 THE COURT: But it doesn't need to be the standby
22 letter of credit made at the request of any other party,
23 whether it's Sector or anyone else, right?

24 MS. MARASCIULLO: Right. Let me just make one other
25 point. Mr. Yu does say that the standby letter of credit is

NB6RSECh

1 valid and still in force.

2 THE COURT: I would imagine if you receive a standby
3 letter of credit from J.P. Morgan that it's likely going to be
4 valid.

5 MS. MARASCIULLO: Right. And so I -- this whole
6 concept of positive verification, ask Ms. Nunn to show you an
7 email where Mr. Santos complained that there was a problem with
8 the standby letter of credit. She wouldn't be able to because
9 he never did. In fact, what he did was send emails to my
10 client saying the money was on the way.

11 THE COURT: Okay. Ms. Nunn, that's a fair question.
12 As I indicated, you emphasize at various points in your papers
13 that before the tranches could be released, Ethos had to
14 receive a "positive verification" concerning a standby letter
15 of credit. Where do you get that information from?

16 MS. NUNN: That is in section 4.1 of the agreement. I
17 believe East West Bank pointed it out --

18 THE COURT: Ms. Nunn, I do apologize. Can you please
19 slow down so that we can understand what you are saying.

20 MS. NUNN: I'm sorry. In the agreement between Ethos
21 and Sector, there's an article 4 financial instrument
22 procedure. There's a section 4.1 that discusses the issuance
23 and delivery of the financial instrument. I believe counsel
24 for East West Bank may have just referred to it. There's
25 direct mention of positive verification and activation in that

NB6RSECh

1 section. I would also --

2 THE COURT: Let me ask you, Ms. Nunn, if I could:
3 What does that mean?

4 MS. NUNN: This is essentially the procedures that
5 must be met for the agreement and where Ethos is obligated to
6 make disbursements to Sector under this agreement.

7 THE COURT: Okay. Let me ask you, because I'm told by
8 the bank that, first of all, it is unfamiliar with that term.
9 And I'm told by the representative from Sector that it did
10 everything it needed to do in order for the standby letter of
11 credit to be posted, which is to say, it directed its bank to
12 send a letter to EWB, and EWB acknowledged acceptance of the
13 standby letter of credit. What more needs to be sent up into
14 the sky to finally verify sufficient to your client's
15 satisfaction that the standby letter of credit was, in fact,
16 posted for the purposes that the parties intended?

17 MS. NUNN: That's discussed in our brief on page 4
18 under section 4.1 of the agreement, "Sector must ensure the
19 issuance of updated bank accounts, bank statements, essentially
20 proof of funds confirming --

21 THE COURT: Ms. Nunn, you really need to make a
22 conscious effort to sound out every syllable because we're
23 having a difficult time.

24 MS. NUNN: I'm sorry. On page 4 of our opposition
25 brief, we described the process for positive verification and

NB6RSECh

1 activation and the steps not met by Sector with respect to this
2 agreement. Under section 14.1 of the agreement, Sector must
3 ensure the issuance of an updated bank statements confirming
4 the financial capacity of Sector and the willingness of
5 Sector's issuing bank to issue a standby letter of credit in
6 its provision of Swift MT760 in the form agreed by Ethos. It
7 further states that after Ethos' receivings bank receives the
8 swift MT760 from Sector's issuing bank, it will carry out a
9 verification procedure.

10 THE COURT: Who will carry out?

11 MS. NUNN: There are a few other things --

12 THE COURT: I'm sorry. Who will carry out the
13 verification procedure?

14 MS. NUNN: Ethos.

15 THE COURT: Ethos will carry out a verification
16 procedure? Are you saying that Ethos did not carry out a
17 verification procedure?

18 MS. NUNN: Under certain circumstances, Ethos was
19 unable to receive updated bank statements confirming financial
20 capacity of Sector and was also unable to verify certain
21 assets.

22 THE COURT: So now I'm hearing that it was Ethos that
23 was required to undertake positive verification procedures, and
24 it was unable to do so because it did not receive or could not
25 verify certain bank information concerning Sector?

NB6RSECh

1 MS. NUNN: Unlike Sector's arguments today, these are
2 not new arguments that I'm raising at oral argument here. I'm
3 reading from page 4 of our opposition brief.

4 THE COURT: Yes, I'm reading from page 4 of our
5 opposition brief. And it sounds like what you are saying to me
6 now is that the positive verification procedure and activation,
7 it was incumbent upon Ethos to undertake certain steps and that
8 Ethos was not able to do that. Is that what you are saying to
9 me now?

10 MS. NUNN: Section 4.1 is a fairly lengthy provision.
11 There are various roles for various parties in it, so I don't
12 want to simplify it down to Ethos just needed to verify an
13 account. That's not what the agreement says. And part of the
14 problem of, you know, this preliminary injunction hearing we're
15 having, and one of the things I would like to correct on the
16 record is, you know, I disagree vehemently with a number of the
17 allegations being made about Mr. Santos' declaration, about the
18 discussions being had in settlement and about, you know,
19 various things that have transpired with respect to Mr. Santos
20 trying to move funds after the hearing. I mean, none of this
21 is stuff is true and is not appropriate for the forum.

22 We should be in mediation, and I'm grateful that
23 Sector has finally followed the contract, the bargain
24 agreement, and filed for mediation. You know, it's sort of --
25 and part of the problem of this hasty rush to a preliminary

NB6RSECh

1 injunction hearing is that it's very difficult to understand
2 the nuances and provide, obviously, all the documents to show
3 all the problems that occurred underneath this agreement. If
4 Sector indeed really did believe that they would be successful
5 on the merits, why did they not file a mediation request months
6 ago? We would be done with this procedure by now? Instead,
7 only after the Court and Ethos said numerous times that the
8 appropriate way to go about seeking relief that they hope to
9 gain here is to follow the dispute provision in this agreement
10 and go to mediation.

11 THE COURT: Yes, I take that point, Ms. Nunn. But let
12 me ask you this: In your papers, first of all, you indicate
13 that from your perspective, Ethos was under no obligation to
14 release the funds that it had agreed to lend Sector because
15 there was never this positive verification procedure that was
16 completed. And what Sector tells me is that, Well, you know
17 they never said that before and what we have on the record,
18 what they've submitted, are communications and emails from
19 Mr. Santos when Sector requested the release of the funds. And
20 he never said, Well, I can't release the funds because you
21 haven't positively verified or we haven't positively verified.
22 We'll release the funds. I've made the arrangements to release
23 the funds. The funds are in the mail. You'll get them as soon
24 as, you know, the bank releases them. And now you are saying
25 something different. So what is your explanation for that?

NB6RSECh

1 MS. NUNN: Yeah, I mean, I think that Ethos has been
2 very straightforward and has tried to work with Sector in order
3 to be in the midst of good faith and productive negotiations
4 between the two. And they have obviously, you know, always
5 taken the position that they would like to happily return the
6 \$3.5 million, as well as if the standby letter of credit could
7 not be released, \$5 million, as long as there's an agreement
8 signed between the parties. That has always been Ethos'
9 position, and as I started off this conference, we have yet to
10 even hear back from Sector on that.

11 We agreed upon, obviously, the terms, and every time
12 that we get close, we can't seem to get it done here, which is
13 why I think mediation is necessary at this point. There's no
14 argument on Ethos' part that they are not willing to reach a
15 compromise and try and go our separate ways. But the fact of
16 the matter is this ex parte motion, filed in the midst of good
17 faith and productive notions between Ethos and Sector, is an
18 end run to get around the contract provisions that exist in the
19 agreement between Ethos and Sector.

20 THE COURT: Let me ask you this, Ms. Nunn. Ms. Nunn,
21 let me ask you this: Again, I get your point that Sector
22 didn't file for arbitration, at least not in the first
23 instance. Ms. Marasciullo, has presented arguments concerning
24 the balance sheets that were provided by Ethos in connection
25 with this litigation, and has, frankly, questioned the

NB6RSECh

1 authenticity of these documents. It's a serious allegation.

2 I'll just leave it at that. Did you want to respond to that?

3 MS. NUNN: Yes, I have a few things I want to respond
4 to, and that is at the top of the list. I must admit that it
5 was my idea to redact. Ethos provided us everything. Their
6 taxes, their financial statements, everything without any
7 redactions. It was my idea that I never -- it never crossed my
8 mind that anyone would be looking at the numbers and saying
9 that they are too sequential. We removed the actual bank
10 account numbers. Those are not his bank account numbers. I
11 thought that that would kind of go without saying. But in the
12 abundance of caution, I don't want something that was done in
13 order to protect Ethos to come across in some sort of
14 fraudulent, you know, misrepresentation. I did not --

15 THE COURT: I'm sorry. So now you are saying that the
16 numbers, the bank account numbers that are provided in the
17 Ethos Asset Management Inc. balance sheet as of September 30,
18 2023, aren't actual bank account numbers but rather numbers
19 that you created or were created at your direction for purposes
20 of this litigation?

21 MS. NUNN: I did not change the total numbers. The
22 numbers beneath, the bank account numbers are not his actual
23 bank account numbers. Those are indeed -- were, I guess, sort
24 of changed at the -- at the -- at the firm is my understanding.

25 THE COURT: At the what?

NB6RSECh

1 MS. NUNN: I'm sorry. The total numbers, the numbers
2 to the right, I did not touch. Those are the numbers that were
3 provided, but anything that is in reference to a bank account
4 number --

5 THE COURT: Yes?

6 MS. NUNN: -- that is something that we redacted.

7 THE COURT: Again, you are using the word "redacted,"
8 but if you redact the first however many digits, the remaining
9 digits are still sequential. So are you saying that you put in
10 proxy numbers in place of the actual bank account numbers, like
11 John Doe bank account numbers?

12 MS. NUNN: I'm looking down this sheet, and I don't
13 believe that these numbers represent numbers that were
14 provided. So I guess I should say, there was a bank account
15 number next to those numbers if that makes any sense.

16 THE COURT: No.

17 THE DEFENDANT: So where it says 105, 106, 107, 123,
18 1600, 1700 --

19 THE COURT: Yes, I have those.

20 MS. NUNN: Those are not account numbers.

21 THE COURT: These are not account numbers?

22 MS. NUNN: Correct. Those are not account numbers.

23 THE COURT: I've used the term John Doe numbers.
24 You've used the term redacted, but those numbers were made up,
25 correct?

NB6RSECh

1 MS. NUNN: Correct.

2 THE COURT: Who were they made up by?

3 MS. NUNN: I would say probably our legal assistant
4 team. Can I double check that?

5 THE COURT: One of the reasons I tell lawyers to sit
6 down, as I've mentioned, is I can see the reaction. One of
7 disadvantages that you have by not being here is that you can't
8 see my reaction, and you should know that I'm a little
9 perplexed at the explanation that you've given. I understand
10 that you don't want to give actual account numbers. We
11 frequently redact those, but when we do that, it's clear that
12 they are redacted or you might just put bank number XX,
13 whatever it may be. But these numbers appear to be made up for
14 no good reason, and you didn't actually tell the parties that
15 these were not actual account numbers; is that correct?

16 MS. NUNN: I did not tell the parties that these were
17 not actual numbers. We tried to show the numbers to show Ethos
18 was entirely solvent. I'm not entirely sure, but I believe it
19 was more information on this balance sheet than what we have
20 provided to the Court. I guess I could not speak to how or
21 with the -- I don't have the original document in front of me
22 right now to tell you what was actually with certainty on there
23 and what we --

24 THE COURT: It may be helpful now, Ms. Marasciullo,
25 for me to see the email that you have.

NB6RSECh

1 MS. MARASCIULLO: Yes, your Honor.

2 MS. NUNN: Your Honor, can I correct a few more things
3 if no one is speaking?

4 THE COURT: Sure. But, again, speak slowly. Speak
5 slowly.

6 MS. NUNN: I will speak very slowly. I never
7 represented that I could email East West Bank and cancel the
8 standby letter of credit. I do not have any ownership of Ethos
9 and no ability to do such a thing like that.

10 MS. MARASCIULLO: Why are the emails saying that?

11 THE COURT: No, no, no. I'm sorry. Ms. Nunn, what
12 was it that you just said?

13 MS. NUNN: I never represented that I could email East
14 West Bank and cancel the standard letter of credit.

15 THE COURT: You never represented that you could
16 cancel the standby letter of credit?

17 MS. NUNN: Yes, yes. There were a few things that
18 were being said by Sector's counsel that were alleged towards
19 me that I just wanted to clarify. I did not say that I could
20 do that.

21 MS. MARASCIULLO: I never meant to indicate that
22 Ms. Nunn could do it. I have emails from Ms. Nunn saying that
23 Ethos could do it. Your Honor, I did a very bad job of
24 redacting an email from my client to me. That's the unredacted
25 email I got.

NB6RSECh

1 MS. NUNN: Could I also continue, your Honor, with a
2 few other things very slowly?

3 THE COURT: Sure. Slowly.

4 MS. NUNN: This is a dispositive account, as I believe
5 Ethos accurately described. Money goes into this account,
6 money goes out. This was not an account that was earmarked for
7 Sector as East West Bank has alluded to. This is -- there was
8 nothing in the agreement that states that this account would be
9 kept with \$3.25 million for Sector in it. There are regular
10 transactions coming and going, deposits being made, withdrawals
11 being made, that have absolutely nothing to do with this matter
12 at hand.

13 THE COURT: Okay.

14 MS. NUNN: I just wanted to make sure that that was
15 absolutely clear, that the deposit account was like any other
16 account that one might have.

17 THE COURT: Okay.

18 MS. NUNN: I think it's clarified by East West Bank,
19 also, that we did not, after the hearing, make any withdrawals
20 out of the account. If anything further needs to be stated on
21 that, let me know. There's no proof or evidence that that
22 indeed was done. Just to, you know, put a pin in that, the
23 burden obviously is not on Ethos in this preliminary injunction
24 hearing as we all know. The burden is on Sector in this case
25 to provide affirmative evidence establishing that a failure to

NB6RSECh

1 issue an injunction as demanded would cause irreparable harm.
2 An injunction is obviously an extraordinary act, and in the
3 face of an entity that has hundreds of millions of dollars,
4 does not seem appropriate. The arguments that have been made
5 are based on a monetary one, which is obviously insufficient in
6 a preliminary injunction to seek this sort of relief.

7 As discussed at the TRO, there's no actual or imminent
8 harm to plaintiff, and if we -- while Ethos has obviously tried
9 to proceed amicably and in good faith to reach an agreement, we
10 have been unable to, and that is by no means on the fault of
11 Ethos. The payment schedule that Sector described was
12 something that the parties actually agreed to; whereas, Ethos
13 was asked to put on paper and provide to them, which they did
14 immediately, and then heard nothing. I urge the Court to keep
15 in mind that this all transpired as a sort of end run around
16 the parties' contract, that neither defendant was given notice
17 or served ever in this case. And they have never attempted to,
18 and they have really tried, as far as I can tell, to turn this
19 Court into its pursuit of relief despite the fact that there's
20 no immediate or irreparable harm and no reason to conclude that
21 the mediation that will take place in the next 30 days would
22 not result in the relief that they desire.

23 THE COURT: Okay. Thank you, Ms. Nunn. What I have
24 is an email of -- can I indicate the names, Ms. Marasciullo?

25 MS. MARASCIULLO: I would prefer that you didn't

NB6RSECh

1 because I -- we've already been threatened.

2 THE COURT: I'm sorry. Who has been threatened?

3 MS. MARASCIULLO: It is my understanding that Ethos
4 has been out there -- I'm not using the word threatened in a
5 legal sense. We've been on the receiving end of unpleasant
6 communications. Let's put it that way.

7 THE COURT: From whom or what types of parties?

8 MS. MARASCIULLO: Well, from Ms. Nunn, and I
9 understand -- I've been contacted by several lawyers in the
10 last couple of days who have experienced similar treatment.
11 Meaning, they've handed over collateral to Ethos with the
12 understanding that Ethos would make a loan, and Ethos has not
13 made a loan. People have been reaching out to me about this.
14 I suspect, based upon what I've heard, that transfers were
15 initiated. Ms. Nunn's partner told me that they knew about
16 this case on Saturday. I don't know when those transfers were
17 initiated out of the East West Bank account, but I'm not
18 surprised by it, and I would rather not see that money move.

19 I'm here to get relief from my client, and I would say
20 I'm looking at an email from Ms. Nunn dated November 9 saying,
21 "Ethos will send an email to EWB today releasing the SBLC."
22 That was at 11:58 Thursday morning, and then a couple hours
23 later, we heard from East West Bank indicating that Ethos
24 doesn't have the ability to release the SBLC because it's
25 incumbered. We did not know that.

NB6RSECh

1 I would like to take a step back to address the issue
2 of the verification process that Ms. Nunn is talking about. I
3 just want to address two things, if your Honor will indulge me?

4 THE COURT: Okay.

5 MS. MARASCIULLO: Number one, the standby letter of
6 credit is issued by J.P. Morgan, who has to honor it. So the
7 idea that there needs to be a verification by Ethos of Sector's
8 assets doesn't make any sense with respect to the standby
9 letter of credit because it's not Sector that issued it as
10 everybody has told me. It's J.P. Morgan. So verifying
11 Sector's assets is irrelevant. That's number one. Number two,
12 that's not what the agreement says. Number three, there's a
13 form for the standby letter of credit in the agreement and
14 that's the form in which it was issued. So I think that's a
15 little bit of a frolic and a detour.

16 And perhaps I'm on one right now by bringing this up,
17 but I am concerned that reading the name of the person that
18 sent that to me, because, your Honor, I deliberately didn't
19 file a fraud claim or accuse anybody of fraud when I filed
20 this. We said at the outset that we were going to pursue
21 arbitration. I don't know why we're talking about that because
22 we have filed an arbitration. But I would point out that
23 7502(c) allows the arbitration to be commenced. That's the
24 language of the statute. We didn't hide from the Court the
25 fact that there was an arbitration provision. We said it. We

NB6RSECh

1 were going to pursue on it, and now we have.

2 We're not here, as I said last week, seeking ultimate
3 recovery on the merits or ultimate recovery on our claim.
4 We're seeking the return of our collateral. And what I've
5 heard here today is Ms. Nunn tell you that this is a wealthy
6 company with, you know, \$700 million in cash in bank accounts.
7 East West Bank has told you they've moved \$19 million to their
8 account. On the day that we had a hearing, they tried to take
9 out another \$500,000. The concern that I have is that my
10 client will not live to get through an arbitration. Now,
11 Ms. Nunn and Ethos and East West Bank can say, Well, that's not
12 monetary relief. It's not monetary relief in two
13 circumstances. It's not monetary relief when, one, there's a
14 real concern that the assets are going to be dissipated. I
15 think that's is a legitimate concern. I don't think anybody
16 who sat and listened to the evidence and read the pleadings
17 could have any doubt about that.

18 Number two, they are destroying my client's goodwill.
19 Your Honor, nobody has said that there isn't case law saying
20 when a business faces an existential threat to its goodwill
21 that that is not irreparable harm. Nobody has said that
22 because it is irreparable harm. When East West Bank said I
23 haven't carried the burden, that I offered you conclusions,
24 I've offered a ten-page affidavit that explains in incredible
25 detail what the problem is. The problem is we shut down our

NB6RSECh

1 mines in Canada. We've laid off people in Canada. We are
2 looking to layoff people in Colombia. It's not a simple cash
3 flow problem. My client has been working on these mines and
4 developing them over a period of 20 years. They've developed
5 relationships with banks and mining authorities in two
6 countries. They've developed relationships with people on the
7 ground in two countries, and now all of that is getting
8 destroyed because a business that claims to have \$699 million
9 in assets won't give us our \$8.25 million in collateral back.

10 Now, Ms. Nunn might say, Oh, we didn't have an
11 obligation to pay you the \$10 million. I don't think her
12 interpretation of the contract passes the laugh test candidly.
13 But I'm not here asking you to give me relief on the claim that
14 I filed an arbitration. I'm here asking you to tell a party
15 that has absconded with our collateral, that is managed by
16 someone who is not even a permanent resident of the United
17 States, to put our money -- to not withdraw any more money out
18 of account at East West Bank and not drawdown on that line of
19 credit so that we won't be on the hook on the standby letter of
20 credit that backs up the line of credit that my client wasn't
21 aware of.

22 I want to mention one more thing, East West Bank has
23 told you a number of times that I should have known about their
24 loan because it's in the standby letter of credit. You know
25 what else in the standby letter of credit? Our agreement.

NB6RSECh

1 It's on line 45(L) of the standby letter of credit so. I mean,
2 it's very difficult to sit here and to listen to, You should
3 just trust me. I'm just going to dangle you out infinitely
4 into the future. You haven't acted fast enough. You delayed,
5 so, therefore, you can't show irreparable harm, but you acted
6 prematurely because you have to go to arbitration. This is not
7 something anybody took lightly. We listened and heeded what
8 East West Bank said. What is before the Court at this point is
9 an entity that indisputably has control of my client's
10 \$8.25 million, that according to them has the ability to repay
11 it, and instead of taking the steps necessary to repay it, on
12 the morning of the hearing initiated \$500,000 in wire
13 transfers.

14 MS. NUNN: Your Honor, can I please comment very
15 briefly to some of that?

16 THE COURT: Not yet. Ms. Nunn, no. What quibble I
17 would make of what you just said, Ms. Marasciullo, as I
18 understand it, the client -- if you are including in your
19 \$8.5 million that Ethos supposedly has control over, it doesn't
20 have control over the standby letter of credit.

21 MS. MARASCIULLO: Your Honor, it's funny you say that
22 because Ms. Nunn sent me multiple emails telling me that Ethos
23 could cancel it, and that's why I should settle the case. If
24 we thought Ethos could cancel it, we might not be having this
25 conversation.

NB6RSECh

1 THE COURT: Let let's put aside what Ms. Nunn said,
2 and you or Mr. Levison tell me if I'm wrong; Ethos doesn't have
3 control over the \$5 million line of credit.

4 MS. MARASCIULLO: I think if Ethos paid down the \$6.8
5 money on the line, then we could probably reach an agreement,
6 and according to Ms. Nunn, they obviously have an ability to do
7 that.

8 MS. NUNN: Your Honor? At some point?

9 MS. MARASCIULLO: If there were no withdrawals or
10 there was no balance on the line of credit that Ethos has with
11 East West Bank, there would be no need for that standby letter
12 of credit. So the idea that we haven't tried to work this out,
13 we've tried.

14 THE COURT: Ms. Nunn, you want to say anything?

15 MS. NUNN: Your Honor, I honestly can't sit here
16 anymore and listen to this. First, we started this soliloquy
17 with, I guess, implying that certain threats were made by
18 myself against Ms. Marasciullo. I have no idea what she is
19 talking about. I have only seen her with us in the Court here.
20 I have only corresponded via email and with other partners from
21 my law firm on the phone. I have never, ever, ever in my life
22 made any sort of threat towards to Ms. Marasciullo or her
23 clients. And I find it deeply, deeply offensive, what she's
24 implying to this Court, and it goes to the sheer falseness of
25 this whole TRO preliminary injunction.

NB6RSECh

1 My client, Ethos Asset Management, is a U.S. firm.
2 Regardless of the board or the founder's national origin, it is
3 a U.S. firm. Second, I have never – again, I thought I made
4 this clear before – said that I can email East West Bank and
5 cancel the standby loan of credit. In order to prove that, I'm
6 happy to show you the last version of the settlement agreement
7 which states, "We will cancel the standby letter of credit,
8 release it, or pay \$5 million depending on what East West Bank
9 tell us is available." Again, I've never done that.

10 The hearing on the 6th and the allegation that my
11 client, after the hearing, went to East West Bank trying to
12 remove funds is, again, false. There is no evidence whatsoever
13 after this has been put forward that even makes that even
14 possible. I'm very shocked at the level that we're going to in
15 this proceeding to act as if we've not been operating under
16 good faith to desperately get this settlement agreement signed,
17 which Ethos has been at the table from day one trying to get
18 done. And only because Sector went behind their back hoping
19 that Ethos would not find out about this filing and show up in
20 court to prevent the TRO that was denied has this proved
21 difficult.

22 THE COURT: Okay.

23 MS. MARASCIULLO: Your Honor, can I just clarify one
24 thing?

25 THE COURT: Sure.

NB6RSECh

1 MS. MARASCIULLO: I didn't say that Ms. Nunn
2 threatened anyone in a legal way. I said that Ethos has done
3 things, and Ethos has done things. Ethos, I have spoken to at
4 least one lawyer who told me that he's in the midst of the
5 mediation. He cannot name his client because he has -- I know
6 from what he has told me that it is accurate. I have heard
7 from other parties, like I said, who have been told not to
8 provide information. That email that you have is not
9 solicited. I'm concerned about -- I'm concerned about the
10 party that sent us that email.

11 THE COURT: Let me just --

12 MS. MARASCIULLO: That was unsolicited and out of the
13 blue.

14 THE COURT: I understand. You have provided the
15 Court, Ms. Marasciullo, with evidence of two other lawsuits --

16 MS. MARASCIULLO: Yes.

17 THE COURT: -- that have been brought against Ethos.
18 They seem to allege conduct similar to the conduct that you are
19 alleging here, which is to say, an agreement was reached, the
20 deal was structured such that the lender provided 20 or
21 25 percent collateral and Ethos was thereafter to provide
22 funding in a series of tranches, as happened here, and in both
23 of those prior instances, one of which was filed in the state
24 court of Texas, I believe --

25 MS. MARASCIULLO: Yes.

NB6RSECh

1 THE COURT: -- one of which was filed in state court
2 here in New York.

3 MS. MARASCIULLO: Yes.

4 THE COURT: The lender provided the cash collateral
5 and thereafter, no financing followed, and that is what is
6 happening here.

7 MS. MARASCIULLO: Yes.

8 THE COURT: So now, you are stating on the record that
9 you have heard from others with apparently similar stories.
10 Are these apart from the entities that filed the lawsuits?

11 MS. MARASCIULLO: Yes, they are. They are apart from
12 the entities that filed the lawsuit. There's another -- yes,
13 that is correct.

14 THE COURT: And the email that you provided me, and I
15 will only characterize it to this extent, is that it lists four
16 accounts, four bank accounts. Two I recognize as American
17 banks; two I don't recognize as foreign banks. And it simply
18 lists places where Ethos apparently has accounts. It doesn't
19 have the amount of money in any of those accounts.

20 MS. MARASCIULLO: It doesn't have the amount of money.
21 It has the details though. It has the account numbers and the
22 routing numbers.

23 THE COURT: Yes. That's the email that was provided
24 to me just so the record is clear.

25 MS. NUNN: Your Honor?

NB6RSECh

1 THE COURT: It does have the name of the person who
2 sent the email, and it was sent to Sector.

3 MS. MARASCIULLO: That is correct. And just to be
4 clear, I have heard from a lawyer representing another company
5 and I have heard from another business owner. And then there's
6 a third company that did not file a lawsuit but there was a
7 bankruptcy. It was referenced in the Beyond Limits complaint,
8 and I'm going to -- it's a complicated name, but it's like the
9 Idaho Health Exchange, and there are reported media reports
10 about it. It's the same circumstance. They provided
11 collateral. They were supposed to get a loan, and they did not
12 provide collateral. I mean, they did not get the loan. This
13 is not an isolated event.

14 MS. NUNN: Your Honor?

15 THE COURT: Yes.

16 MS. NUNN: I will speak slowly. None of these cases
17 sought emergency TROs or preliminary injunctions, and they are
18 not an appropriate remedy under the contracts. The company one
19 that we're discussing that is the state court case in Texas,
20 Travis County, was a start-up company in Texas court in 2022,
21 alleged various claims. It was, of course, brought in the
22 wrong forum after a motion to compel, moved to arbitration. It
23 was appropriately moved to arbitration, and within a few weeks,
24 it ceased to exist. There's no allegation that Ethos
25 absconded, that Ethos refused to pay a judgment, that Ethos

NB6RSECh

1 went bankrupt. Nothing on the record is other than the two
2 parties -- Advantage, is what the client is called, misfiled
3 the complaint, much like this, in court, and it was eventually
4 resolved. And there was no judgment whatsoever against Ethos.
5 I'm not exactly sure where the allegations that Ethos is
6 judgment proof are coming from. Similarly, Beyond Limits,
7 which is an artificial intelligence start-up, has failed to
8 serve even Ethos in their latest complaint that was awkwardly
9 filed in New York state court for an alleged breach of the
10 agreement.

11 Considering that Ethos has been in business for so
12 many years, naming three complaints against it in the entire
13 lifetime of the company, to me, seems slightly ridiculous.
14 None of these other companies sought TROs or PIs because it's
15 clearly inappropriate. All of the cases did not follow the
16 provisions of the agreement, and both Beyond Limits, in this
17 case, these are plaintiffs who did not feel the need to provide
18 notice or provide the other side a copy of the complaint. None
19 of the facts were consistent with the plaintiff getting
20 judgment and Ethos refusing to pay or being unable to pay the
21 amount ordered by the Court.

22 There's none of them feature injunction or freezing on
23 their bank accounts. There's nothing even close to what Sector
24 contends is negligence in order to bring Ethos to the table.
25 In fact, the record reflects on the docket sheet that Ethos was

NB6RSECh

1 proactively involved in all of these cases and quite
2 successfully.

3 THE COURT: Okay. So --

4 MS. NUNN: And just for the last part, I don't know
5 who this person is that alleges that they are an Ethos'
6 employee and is sending bank account numbers to Sector. I find
7 this all very suspicious. I can't see it. I don't know who
8 it's from. I just -- I am not sure. I object to it, you know,
9 coming in as evidence and being considered as damning to Ethos
10 as, I guess, some employee saying that they have bank accounts.
11 I'm not exactly sure what it is alleging, but I find that it's
12 problematic.

13 MS. MARASCIULLO: Well, your Honor, this is not ideal
14 for anybody, but the fact of the matter is, there's no dispute
15 that Ethos got my client's collateral. There's no dispute that
16 it has dissipated yet, and that's why we're here. There's also
17 no dispute that we filed for an arbitration.

18 THE COURT: Okay.

19 MS. MARASCIULLO: You know, the issue is whether or
20 not my client will live to see the end of an arbitration, or if
21 when it gets to the end and it prevails, if there's anything to
22 execute on. That's the real concern that brought us here.
23 That has been the concern all along. I'm back to Ethos is now
24 taking the position that they never had an obligation to pay
25 the -- it wasn't \$10 million. They've missed three tranches of

NB6RSECh

1 \$10 million. That's utterly inconsistent with what they told
2 us they were doing. As recently as October 30, Carlos Santos
3 sent my client what he claimed was a wire transfer number from
4 Credit Suisse. Now the money never showed up just like the
5 standby letter of credit was never canceled, and they don't
6 have an ability to cancel it.

7 THE COURT: This is how I'm thinking about it and then
8 we'll take a break.

9 This is a hypothetical, so I'll try to make it clear.
10 Let's say Ms. Nunn borrowed money from Ms. Marasciullo, but
11 there was \$100. And let say Ms. Nunn separately borrowed money
12 from me. Let's say it's \$1,000. Ms. Nunn is refusing for
13 whenever reason to pay back Ms. Marasciullo. However, Ms. Nunn
14 has paid me back \$700. It sounds to me, Ms. Marasciullo, like
15 what you are asking the Court to do is to say, you, Ramos, the
16 Court, tell Ramos to pay Ms. Marasciullo the money that
17 Ms. Nunn owes her. What is wrong with what I just described?

18 MS. MARASCIULLO: I candidly did not follow your
19 hypothetical.

20 THE COURT: I'm the bank. I'm East West Bank, yes.

21 MS. MARASCIULLO: I'm not asking East West Bank to pay
22 us anything, your Honor. I'm asking you to enjoin --

23 THE COURT: East West Bank --

24 MS. MARASCIULLO: -- enjoin Ethos from drawing down,
25 taking any money out of the account that has the \$812,000 in it

NB6RSECh

1 or drawing down on the line of credit they have with East West
2 Bank. And I'm asking you to enjoin East West Bank -- actually
3 asking you to do what East West Bank has already done, which is
4 put a freeze on the account. They put a freeze on the account,
5 you know, after the court hearing. They think it's appropriate
6 because they did it.

7 MS. NUNN: The Court hearing --

8 MS. MARASCIULLO: I'm not asking you to order anybody
9 to pay me. I'm asking you to put an injunction in place that
10 prohibits Ethos from moving its assets.

11 THE COURT: But the way that you are doing it is
12 saying, Court direct Ramos to keep \$100 that Ms. Nunn owes me;
13 whereas, it's my money. I can do whatever I want.

14 MS. MARASCIULLO: It's not the bank's money. The bank
15 doesn't have title to that money.

16 THE COURT: Mr. Levison?

17 MS. MARASCIULLO: He's not custodian of that money.
18 They are holding it for Ethos.

19 THE COURT: Mr. Levison, what you did you think of my
20 hypothetical?

21 MR. LEVISON: I think it makes the point. If I could
22 sum up to make it, short and sweet?

23 THE COURT: Sure.

24 MR. LEVISON: Sector has not asserted a claim against
25 East West Bank. Notwithstanding the fact that Sector

NB6RSECh

1 desperately tries to bring up one in its reply papers by saying
2 there's a type of unjust enrichment claim against East West
3 Bank, it's never been asserted. Let's put that aside for a
4 second. If you note that there's no claim against East West
5 Bank, that means that there could be injunction against East
6 West Bank because you can't show it on the merits. You can't
7 show irreparable harm.

8 Let's assume there was a magic complaint that was
9 filed, and there was a claim against East West Bank of unjust
10 enrichment, it would be dismissed its face. You can't have it
11 on unjust enrichment because it can't possibly be unjust. The
12 bank lent money. The bank is entitled to set-off against this
13 account in the contract. They are entitled take this and pay
14 itself back. Now, again, the bank does not object to this
15 Court entering an injunction and enjoining Ethos from
16 withdrawing money. That's fine, but the bank cannot be
17 prohibited from exercising its contractual right to these
18 monies. There's no relationship to Sector. Sector has no
19 superior right over that account or anybody else, any other
20 creditor.

21 MS. MARASCIULLO: But your Honor -- sorry.

22 MR. LEVISON: What the petitioner is attempting to do
23 is fit a square peg into a round hole. It's just not a -- if I
24 could just finish --

25 MS. MARASCIULLO: Your Honor --

NB6RSECh

1 THE COURT: Ms. Marasciullo, please wait.

2 MR. LEVISON: That's not what we're here about. We're
3 here for an application for a preliminary injunction that has
4 been changed now twice, right, from the papers to what was said
5 in reply to now an oral argument. We're now at a completely
6 separate request. The bottom line is this: The petitioner has
7 not met its burden of proof as against the bank. The bank
8 should be free to exercise its rights.

9 MS. MARASCIULLO: Your Honor, may I respond just
10 briefly?

11 THE COURT: Very briefly.

12 MS. MARASCIULLO: Very briefly. First of all,
13 Mr. Levison is right that theoretically we could seek an
14 attachment except for the fact that East West Bank is in
15 California, and as your Honor just issued an opinion in the
16 case, I can't get an order attachment from a New York court for
17 a bank in California. However, pursuant to 7025(c) and section
18 6200 or 633 of the CPLR courts frequently order grant relief
19 against banks who are not defendants again who no claim is
20 asserted. I disagree strongly with Mr. Levison I could in fact
21 assert against the bank I would rather not. I would rather
22 just protect the assets. The bank doesn't have a greater
23 interest in that money than we do. The banks own affidavit
24 establishes that we deposited \$3.25 million into an account at
25 East West Bank and Ethos has taken it. The bank's papers also

NB6RSECh

1 establish --

2 MS. NUNN: Your Honor --

3 MS. MARASCIULLO: -- that Ethos has a line of credit
4 with the bank. Right now, it's drawn down \$6.8 million. The
5 bank hadn't told you what other standby letter of credits they
6 have other than they have other standby letter of credit
7 securing that amount of money. I don't know what the situation
8 with those is. Nobody has sued Ethos with respect to those as
9 far as I know. None of the lawyers that have called me have
10 told me that have made that claim. So, you know, the bank is
11 here saying there's security. My burden is to show that I have
12 a claim on which I'm substantially likely to succeed. I
13 undeniably have an excellent claim against Ethos. The bank
14 admits it. I've undeniably met --

15 THE COURT: I don't think the bank has said that. I
16 think they said even if you are successful against Ethos --

17 MS. NUNN: Your Honor, can I --

18 MS. MARASCIULLO: Be that as it may, I don't need to
19 have -- if I was in here on an order of attachment, nobody
20 would be saying that I need to have a claim against the bank
21 where I was seeking an attachment. That's the first thing.
22 The second thing is I don't think there's really much room to
23 say that we haven't shown that we're suffering irreparable
24 harm. Mr. Dell'Orfano's affidavit stands before the Court
25 unchallenged. He has clearly explained to the Court and in

NB6RSECh

1 great detail what the harm to Sector's goodwill has been, what
2 the harm of its relationship to its own bank has been, how its
3 own operations have stopped in Canada.

4 THE COURT: Yes, but they are still not entitled to
5 that money until the legal process has played out through the
6 arbitration.

7 MS. NUNN: Correct.

8 MS. MARASCIULLO: Your Honor, I'm not asking you --
9 everybody else is telling you what I'm asking you for. I'm
10 asking to you enjoin Ethos from taking money out of A12. I'm
11 not asking you to order anybody to pay me or my client. I'm
12 asking you to have that money frozen. East West Bank has
13 already frozen it. They've already frozen it.

14 MS. NUNN: Your Honor?

15 MS. MARASCIULLO: The second thing is I'm asking for
16 an order to have East West Bank enjoined from taking further
17 draws on its line of credit that it has from East West Bank,
18 because if they don't draw on that line of credit, East West
19 Bank is not going to need to draw on the standby letter of
20 credit, and that gives me some of the relief that we need.

21 THE COURT: Okay.

22 MS. MARASCIULLO: And honestly, your Honor, I mean the
23 thing that is kind of lost in the mix here, the thing that
24 doesn't make any sense to me is why a company that allegedly
25 has \$699 million in ready, available cash can't pay down the

NB6RSECh

1 standby letter of credit or can't pay down their line of credit
2 with East West Bank and get the standby letter of credit
3 released, which I the emails here. I have a million of them
4 saying we're going to get it released.

5 MS. NUNN: Your Honor, can I please --

6 THE COURT: No.

7 MS. MARASCIULLO: And also, why they can't just give
8 us our collateral back. I can't emphasize this enough, your
9 Honor. You know, your analogy is that I'm trying to get money
10 out of the bank. I respectfully submit, your Honor that the
11 more appropriate analogy might be I get mugged. My colleague
12 that is with me runs after the mugger and says, you know, give
13 me her wallet back. Says, I'll give you 50 bucks. Go away.
14 That's what happened here. They took our money. There's no
15 dispute. They have our money.

16 I'm not asking you even to order them to give our
17 money back. I'm asking you to make sure that they are not able
18 to ensure that they were trying to do on Monday. I'm not
19 making that allegation. East West Bank told you they did that.
20 They don't really have a dog in the fight in between Ethos and
21 my client, but Ethos is clearly transferring money around.
22 It's not a risk of dissipation of assets. And it's the fact of
23 dissipation of assets. It's the fact that my client has been
24 put over the barrel by someone who has taken our collateral,
25 not performed and saying, I'm not giving your collateral back.

NB6RSECh

1 That's where we are.

2 I know this is inconvenient for everybody. I'd much
3 perfect to work this out, but I don't have a willing partner.
4 I have East West Bank saying notwithstanding the fact that
5 we've frozen this money, we object to what you are doing. And
6 I have Ethos saying, we want to settle, but they won't give me
7 a settlement agreement that is meaningful. They will not do
8 it. The settlement offers that I've gotten are, We'll cancel
9 the standby letter of credit. I have got multiple emails
10 telling me that. I kept saying, Can you do it? Is it
11 incumbered? And I got a run around, and I finally got an email
12 from East West Bank saying, No, we're not going to cancel the
13 standby letter of credit. So it's more important to get the
14 cash back or to get -- I mean, I misspoke again. I'm not
15 asking you to order them to give us the cash back. I'm asking
16 them to freeze that account.

17 THE COURT: Okay. Thank you. Ms. Nunn you have a
18 minute.

19 MS. NUNN: Yes, I'll be very fast.

20 THE COURT: No, no. Don't be fast. You just have a
21 minute.

22 MS. NUNN: I would like to point out that the
23 representations that Sector's counsel are making are not true
24 as far as most of what I've heard today. I can provide you a
25 copy of the last settlement that I sent to them that was

NB6RSECh

1 unanswered, and it by no means says that we will cancel the
2 standby letter of credit and that is the only form of relief.
3 They put a provision in that they agreed to that said that if
4 for some reason East West Bank was unwilling or unable to do
5 it, we would pay them \$5 million and we provided everything we
6 asked for and we could not get them to sign the agreement.

7 Second, we've not taken any money away from Sector.
8 We've not dissipated any accounts. This is, as we've discussed
9 all this hearing, a deposit account. Money flows in, money
10 flows out. It is not Sector's account. We're not taking money
11 from Sector. We are not -- there was a representation made
12 that we all agree, including Ethos, on a number of bases about
13 their being an inability to pay, and us perhaps not being able
14 to be brought forward to pay any judgment that came up.
15 There's nothing whatsoever on the record that even comes close
16 to the conclusion that any injunctive relief they seek in any
17 way would remedy their alleged injuries.

18 If this were a request to order Ethos to pay
19 collateral, there might actually be some nexus, but they've not
20 shown how the requested relief will prevent any of the alleged
21 injury; namely, injury to reputation and the loss of leases.
22 In fact, we now know the money is not even in that account. So
23 to me, this case makes absolutely no sense on the basis of the
24 balance of the hardships. The injunction in public interest is
25 that we obviously have an arbitration agreement. Counsel

NB6RSECh

1 stated that they had filed an arbitration request. That is not
2 true. They actually filed a mediation request only after
3 several occasions where we asked: Why we're not in mediation
4 in this case? We have, I think, made the point over and over
5 that the most compelling factor of the four that they are
6 required to meet is the likelihood of irreparable harm here.
7 This is extraordinary relief that they are seeking. It's not
8 just a casual to freeze someone's bank account, all of their
9 bank accounts with the bank. And there is no proof that there
10 will be any type of irreparable harm if indeed the preliminary
11 injunction is not met and the parties continue on through
12 mediation.

13 And finally, the likelihood of success on the merits,
14 it's very clear that the parties do not agree on the facts of
15 this case and what was required under the contract and what was
16 the steps that would be needed to get the funds that were
17 required to be released in this agreement. I think that is
18 something that is not a slam dunk for their side, and I think
19 that it is something that would have to be explored in a
20 mediation in terms of whether Sector breached the agreement or
21 whether Ethos breached the agreement. There's a lot of
22 flowing, you know, allegations that we all agree -- Ethos
23 agrees, you know, East West Bank says, and they are just not
24 true. I just want to emphasize to please, please pay attention
25 to the language to what is actually going on here. I think

NB6RSECh

1 your example was fantastic. I just don't see any world in
2 which a preliminary injunction could be granted under these
3 circumstances.

4 THE COURT: Okay. Thank you. We'll take a few
5 minutes. Don't go far. Ms. Marasciullo, here are your
6 documents back.

7 MS. MARASCIULLO: Thank you, your Honor.

8 (Recess)

9 THE COURT: Ms. Nunn, are you with us, yes or no?
10 Ms. Nunn?

11 MS. NUNN: Yes, I am with you. Can you hear me?

12 THE COURT: Yes, we are back and Ms. Marasciullo has
13 indicated she has something to share.

14 MS. MARASCIULLO: Your Honor, I just got off the phone
15 with an Assistant U.S. Attorney in San Diego who reached out to
16 me over the weekend. He advises me that Carlos Santos was
17 taken into custody today in Newark. He is apparently appearing
18 in Newark for a hearing.

19 THE COURT: He has been arrested?

20 MS. MARASCIULLO: Yes.

21 THE COURT: He is appearing in the Southern District
22 of New York?

23 MS. MARASCIULLO: Apparently, he is appearing --

24 MS. NUNN: Your Honor --

25 MS. MARASCIULLO: I went outside and called him, and

NB6RSECh

1 said -- I asked him what the status was because he told me to
2 put on a Google alert yesterday when I spoke to him. So I
3 called him to ask if there are any updates, and he told me that
4 Mr. Santos was taken into custody.

5 MS. NUNN: Your Honor?

6 THE COURT: In New York, as far as you know?

7 MS. MARASCIULLO: In Newark.

8 THE COURT: Newark, New Jersey? Okay. I'm sorry.
9 Madam court reporter was right. Ms. Nunn?

10 MS. NUNN: I have obviously not spoken to my client
11 right now. I have been on the phone entirely with you-all. I
12 have no relationship with the AUSA's office, and no one has
13 called me. I find this all very, very, very suspicion, the
14 email from Ethos employees, the calls from the AUSA's office.
15 We were talking about a preliminary injunction here. I do not
16 have any, you know, information on what Sector's counsel is
17 reporting, but I do not think that regardless of whether he has
18 been picked up for -- I don't know what -- or this email from
19 this employee that came to her.

20 I do understand that Sector's counsel has been
21 reaching out to others. In fact, Sector has told me that if
22 they lost this preliminary injunction, that they were going to
23 do whatever they could to reach out to whoever they could to
24 bring actions against Ethos. And I am not sure what this all
25 about, but none of this changes the four requirements of an

NB6RSECh

1 injunction and that Ethos Asset Management had more than enough
2 funds to proceed through mediation in the next 30 days and
3 satisfy any judgment that --

4 THE COURT: Ms. Nunn, can I just stop you there for a
5 second? Depending on what charges have been brought against
6 Mr. Santos, this could dramatically affect the Court's analysis
7 certainly of the likelihood of success. Because if, as
8 plaintiff suggests, Mr. Santos never intended to provide the
9 financing that was negotiated with the collateral that was
10 provided, then that would certainly cause any court to take
11 that into consideration and would; probably result in a finding
12 by the Court that the plaintiff has established likelihood of
13 success on the merits. The other factor is --

14 MS. NUNN: That is one factor. Assuming that that is
15 true and the arguments could be made in the first instance at
16 an oral argument now at the end of our proceeding. Let's
17 assume that is true. The statute still requires that all four
18 preliminary injunctions be established by, you know, actual
19 evidence.

20 THE COURT: And Ms. Nunn -- Ms. Nunn, please,
21 Ms. Nunn?

22 The statute does not require that they be weighted
23 equally, and so this is what I think we need to do: I think we
24 need to get some additional information. Because, look,
25 there's a lot of federal laws, as I have come to learn, to my

NB6RSECh

1 chagrin, since taking the bench and a lot of federal criminal
2 laws. We're working under the assumption, I think, all of us,
3 that Mr. Santos was taken into custody in connection with a
4 fraud affecting the business operations of Ethos. If it was
5 for some other reason, then the analysis concerning likelihood
6 of success may not be as affected so strongly. But assuming
7 that it was in connection with the operations of Ethos, then,
8 yeah, it's important.

9 So it would be important for me to know what the
10 allegations are and what the restraints are. If Mr. Santos was
11 taken into custody and if he is released on bail, it is likely
12 that there will be substantial restraints on his liberty, and,
13 in particular, substantial restraints on his ability to run the
14 business including his ability to maintain any control over his
15 accounts. So, you know, the FBI may have given Ms. Marasciullo
16 what she came here asking for, which is a restraint on the
17 dissipation those assets. And because I do not want to issue
18 an opinion in light of these very emergent activities, what I
19 would want to do is direct the parties to advise me as soon as
20 they are able concerning the status of Mr. Santos' arrest, the
21 nature of the charges against him, including the complaint that
22 was filed. That would be a matter of public information. It
23 should be available this afternoon if it was arrested. There
24 may be a press release from the Department of Justice.

25 MS. MARASCIULLO: I literally just got off the phone

NB6RSECh

1 with the Assistant U.S. attorney.

2 THE COURT: I know and my understanding of how this
3 works is they would not have shared with you prior to his
4 arrest. In other words, he is giving you historical
5 information and not telling you that he will be arrested. And
6 so, go find out what happened. Let me know. That information
7 should be available today, and we'll get back together perhaps
8 by phone. Okay?

9 So I think I'll leave it at that, and I will wait to
10 hear from you-all. So we are adjourned, but Ms. Nunn, don't
11 get off the phone just yet. I did want to ask a question.
12 Good evening, all. We're adjourned.

13 MS. MARASCIULLO: Thank you, your Honor.

14 MR. ALBERTS: Thank you, your Honor.

15 (Adjourned)

16
17
18
19
20
21
22
23
24
25